

A Hardial Singh Sekhon v Talam Leasing Sdn BhdCOURT OF APPEAL (KUALA LUMPUR) — CIVIL APPEAL NO B-03-16 OF
1995MOKHTAR SIDIN, ABDUL HAMID MOHAMAD AND ABDUL KADIR
SULAIMAN JJCA**B 5 JULY 2001***Civil Procedure — Appeal — Record of appeal — Extension of time — Non receipt of sealed copy of order — Delay, whether justified — Rules of the Court of Appeal 1994 r 18(7)*

C On 3 July 1995, the appellant gave notice of appeal against the decision of the judge of the High Court of Shah Alam. According to r 18(7) of the Rules of the Court of Appeal 1994 ('the RCA'), the appellant had to file the record of appeal within six weeks after the entry of appeal or within such time as the court may allow. However,

D according to the registry's record, the record of appeal was not filed within the stipulated time, and further, there was no application from the appellant to extend the time limit. Due to that, the registry fixed the matter for disposal on 27 March 2001. On 28 March 2001, the appellant submitted that he had filed a draft order on 30 July 1995, but the perfected order was never issued due to the file being missing.

E However, he admitted that he did receive the grounds of judgment on 7 June 1995, but because he did not receive the sealed copy of the order, he did not file the record of appeal. He only made the application on 24 March 2001. Counsel for the respondent stated that there was no merit in the appellant's submission to justify the extension of time, and the order was perfected and sealed on

F 7 June 1995, when the grounds of judgment were also made available.

Held, striking off the appeal:

- G** (1) The appellant had failed to file the record of appeal within the time stipulated by r 18(7) of the RCA. The appellant admitted that he received the grounds of judgment on 7 June 1995, but he did nothing nor made any attempt to file the record of appeal within the stipulated time. If he did not receive the sealed copy of the order, he could still file the record of appeal within the stipulated time with the draft order, and the sealed copy of the order could be filed later as a supplementary record of appeal. In
- H** the present case, the court was satisfied that the sealed copy of the order was duly perfected on 7 June 1995, as stated by the learned counsel for the respondent (see p 490A-C).
- I** (2) As for the application dated 24 March 2001, the court was not able to grant an extension of time because it was made more than five years after the ground of judgment was made available to him, and there was no justification for the delay (see p 490C).

[Bahasa Malaysia summary]

Pada 3 Julai 1995, perayu telah memberi notis rayuan terhadap keputusan hakim Mahkamah Tinggi, Shah Alam. Menurut k 18(7) Kaedah-Kaedah Mahkamah Rayuan 1994 ('Kaedah-Kaedah tersebut'), perayu dikehendaki memfailkan rekod rayuan dalam masa enam minggu setelah rayuan dimasukkan ataupun dalam masa yang ditetapkan oleh mahkamah. Akan tetapi, menurut rekod pejabat pendaftaran mahkamah, rekod rayuan tersebut tidak difailkan dalam tempoh masa tersebut, dan tiada permohonan daripada perayu untuk melanjutkan masa. Oleh kerana itu, pejabat pendaftaran telah menetapkan 27 Mac 2001 sebagai tarikh untuk penyelesaian. Pada 28 Mac 2001, perayu telah berhujah bahawa beliau telah memfailkan deraf perintah pada 30 Julai 1995, tetapi oleh kerana fail tersebut telah hilang, perintah yang telah disempurnakan tidak dikeluarkan. Walau bagaimanapun, beliau mengaku bahawa beliau telah menerima alasan penghakiman pada 7 Jun 1995 dan tidak memfailkan rekod rayuan kerana beliau tidak menerima salinan termeterai perintah tersebut. Permohonan tersebut telah hanya dibuat pada 24 Mac 2001. Peguam bagi pihak responden, menyatakan bahawa tiada merit dalam penghujahan perayu untuk menjustifikasikan perlanjutan masa tersebut, dan perintah tersebut telah disempurnakan dan dimeteraikan pada 7 Jun 1995, iaitu tarikh alasan penghakiman dikeluarkan.

Diputuskan, menolak rayuan tersebut:

- (1) Perayu gagal memfailkan rekod rayuan dalam tempoh masa yang ditetapkan oleh k 18(7) Kaedah-Kaedah tersebut. Perayu telah mengaku menerima alasan penghakiman pada 7 Jun 1995, tetapi tidak membuat apa-apa ataupun cuba memfailkan rekod rayuan dalam tempoh masa tersebut. Walaupun beliau tidak menerima salinan termeterai perintah tersebut, beliau boleh juga memfailkan rekod rayuan bersama dengan deraf perintah dan boleh memfailkan salinan termeterai perintah tersebut sebagai rekod rayuan tambahan kemudiannya. Dalam kes ini, mahkamah berpuas hati bahawa salinan termeterai perintah tersebut telah disempurnakan pada 7 Jun 1995, sebagaimana yang dikatakan oleh peguam responden (lihat ms 490A–C).
- (2) Dalam hal permohonan bertarikh 24 Mac 2001, mahkamah tidak membenarkan perlanjutan masa kerana ia telah dibuat lebih dari lima tahun setelah alasan penghakiman dikeluarkan, dan tiada justifikasi untuk kelewatan tersebut (lihat ms 490C).]

Notes

For cases on record of appeal generally, see 2(1) *Mallal's Digest* (4th Ed, 1998 Reissue) paras 865–890.

A Legislation referred to

Rules of the Court of Appeal 1994 r 18(7)

Hardial Singh Sekhon representing himself.

Khor Loke Yew (Christina Chia, Ng & Partners) for the respondent.

- B Mokhtar Sidin JCA.** (delivering judgment of the court): This matter was one of a number of appeals which were listed on 27 March 2001 to be disposed of by us. According to the Registry of the Court of Appeal, the appellant gave notice of appeal to appeal against the decision of the learned Judge of the High Court, Shah Alam on 3 July 1995. According to r 18(7) of the Rules of the Court of Appeal 1994 ('the RCA'), the appellant is
- C** required to file the record of appeal within six weeks after the entry of the appeal or within such further time as the court may allow. The full text of r 18(7) of the RCA reads:

The memorandum and copies above referred to which, together shall be called the record of appeal, shall be filed at the Registry within six weeks after the entry of the appeal or within such further time as the Court may allow.

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From the record available at the registry, it was clear that the record of appeal was not filed on or before 15 August 1995, that was the time stipulated by the rule. There was also no application by the appellant to extend the time to file the record of appeal as required by the rule. The

E practice to extend the time where the judgment of the judge of the High Court could not be obtained in time is in the practice direction. In all other circumstances, extension of time could be made by way of notice of motion. Apparently, from the record, the appellant did not make any application to extend the time to file the record of appeal. For that reason, the registry fixed this matter for disposal on 27 March 2001.

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On 27 March 2001, the appellant appeared personally before us, while Mr Khor Loke Yew appeared for the respondent. At the request of the appellant, the matter was fixed for hearing on 28 March 2001 at 2.30pm. When this matter came up for hearing before us, the appellant again appeared before us personally, and Mr Khor appeared for the respondent.

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In his submission, the appellant stated that he filed a draft order on 30 July 1995, but the perfected order was never issued because the file was missing. The appellant admitted that he received the grounds of judgment on 7 June 1995. Since he did not receive the sealed copy of the order, he did not file the record of appeal. The appellant then went on to say that he did apply to file the record of appeal out of time. This application was only

H made on 24 March 2001, ie after he received the notice and the matter had been fixed for disposal on 27 March 2001.

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Mr Khor, on the other hand, submitted that there was no merit in the appellant's submission to justify the extension of time. Mr Khor submitted that from his record, the order was perfected and sealed on 7 June 1995 and the grounds of judgment was also made available on 7 June 1995. As such, there was no justification of not filing the record of appeal on or before 15 August 1995. As to the appellant's application dated 24 March 2001, it

was not an application for extension of time but a notice seeking directions from the Chief Justice.

After hearing the parties, we are of the view that the appellant failed to file the record of appeal within the time stipulated by r 18(7) of the RCA. The appellant admitted that he received the grounds of judgment on 7 June 1995, but he did nothing nor made any attempt to file the record of appeal within the stipulated time. Assuming that it is true that he did not receive the sealed copy of the order, he could still file the record of appeal within the stipulated time with the draft order, and the sealed copy of the order could be filed later as a supplementary record of appeal, which is commonly done in other appeals. In the present case, we are satisfied that the sealed copy of the order was duly perfected on 7 June 1995 as stated by the learned counsel for the respondent. We have no reason to disbelieve him.

From the evidence, we are satisfied that the appellant failed to comply with r 18(7) of the RCA. As for the application dated 24 March 2001, we would not be able to grant an extension of time because it was made more than five years after the ground of judgment was made available to him and there was no justification for the delay.

The appeal is hereby struck off. The deposit is to be paid to the respondent as full costs of the appeal.

Appeal struck off.

Reported by Chew Phye Ken

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